



Attorney Docket No.: 1148/095

IFW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group Art Unit 3736 : PATENT APPLICATION
Examiner K. Rajan :
In re application of : **METHOD AND APPARATUS FOR
AUTO JOURNALING OF CONTINUOUS
OR DISCRETE BODY STATES
UTILIZING PHYSIOLOGICAL AND/
OR CONTEXTUAL PARAMETERS**
TELLER ET AL. :
Serial No. 10/682,293 :
Filed October 9, 2003 :

ELECTION OF SPECIES

Pittsburgh, Pennsylvania 15222

May 8, 2008

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Examiner has required, pursuant to 35 U.S.C. § 121, that Applicant elect one invention from a grouping of five inventions (Groups I-V), and also to elect a species from four separate species groupings (Groups A-D). The Examiner has identified the separate groupings of the invention as follows:

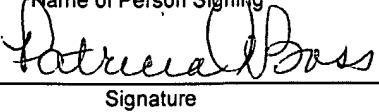
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on:

May 8, 2008

Date of Deposit

Patricia A. Boss

Name of Person Signing



Signature

Group I, claims 1-44 and 96-139, as drawn to an apparatus and method for measuring a state parameter;

Group II, claims 45-59 and 139-159, as drawn to a method of making software for measuring a state parameter;

Group III, claims 60-81, as drawn to an apparatus and method for measuring energy expenditure of an individual;

Group IV, claims 82-95, as drawn to a method of making software for measuring energy expenditure; and

Group V, claims 160-170, as drawn to a method of measuring caloric consumption.

The Examiner has further provided species into which the claims could be drawn. The Examiner has requested that the Applicant also elect one species from each of the species groupings A through D (pages 5-6 of the April 8, 2008 Office Action).

Group I and Group II contain a claim in common, Claim 139. As such the grouping is unclear. For that reason, the restriction is traversed. Applicants submit that the Examiner probably meant for Claim 139 to belong to Group II and not Group I. Nevertheless, Applicant provisionally elects Group I claims 1-44 and 96-139 drawn to an apparatus and method for measuring a state parameter, and Species 2, 3, 6, and 8 with traverse. Therefore, Claims 45-95, 140-170 are withdrawn from consideration.

On page 6 of the April 8, 2008 Office Action, the Examiner states that “a reply to this requirement must include an identification of the species that is elected consonant with this requirement and a listing of all claims readable thereon...” As such, the Applicants provide the following identification:

Provisionally Elected Species 2 (outputs of the one or more second functions and the weights are used to predict the state parameter of the individual) contains the following claims Group I: 3, 6-10, 16-20, 27, 30-34, and 40-44.

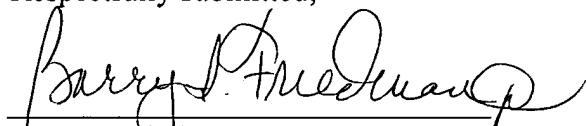
Provisionally Elected Species 3 (sensor included in the wearable device) contains the following claims in Group I: 22, 98, and 122.

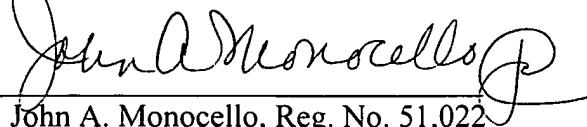
Provisionally Elected Species 6 (processor and memory located separate from wearable device) contains the following claims in Group I: 24 and 100.

Provisionally Elected Species 8 (software executed by processor in computing device) contains the following claims in Group I: 24, 100, and 121.

The following claims do not belong to any the above-elected species described by the Examiner nor do they belong to any of the non-elected species described by the Examiner, thus, the Applicant respectfully submits, the following claims are generic: 1, 4, 5, 11-15, 25, 28, 29, 35-39, 96, 101-119, and 124-138.

Any claim not mentioned in the preceding five paragraphs thus belongs to one of the non-elected species.

Respectfully submitted,
By 
Barry I. Friedman, Reg. No. 33,695
Metz Lewis LLC
11 Stanwix Street, 18th Floor
Pittsburgh, PA 15222
(412) 918-1100

By 
John A. Monocello, Reg. No. 51,022
GTC Law Group LLP
(412) 567-2757